

Appendix “C”

Public Comments and Responses

1. Transmittal of EPA Rule Review Comments, February 02, 2011
2. CARB Preliminary Draft PTSD comments on MDAQMD Preliminary Draft Rule 315, June 23, 2011
3. Transmittal of ARB Staff Rule Review Comments, September 8, 2011
4. Transmittal of EPA Rule Review Comments, September 15, 2011
5. Email thread, Subject AV and MD Staff Reports, September 27, 2011

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Alan De Salvio

From: Steckel.Andrew@epamail.epa.gov
Sent: Wednesday, February 02, 2011 8:30 AM
To: Alan De Salvio; mguzzett@arb.ca.gov
Cc: kkarpero@arb.ca.gov; lbowen@arb.ca.gov; Wong.Lily@epamail.epa.gov; Drake.Kerry@epamail.epa.gov

Subject: EPA Comment on Mojave Rule 315



United States Environmental Protection Agency

Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

February 02, 2011

Transmittal of EPA Rule Review Comments

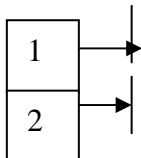
To: Alan De Salvio, Mojave Desert Air Quality Management District
adesalvio@mdaqmd.ca.gov

Mike Guzzetta, California Air Resources Board
mguzzett@arb.ca.gov

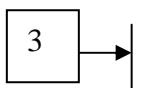
From: Andrew Steckel, Rulemaking Office Chief
steckel.andrew@epa.gov

Re: MDAQMD Proposed Rule 315; "Clean Air Act Section 185 Penalty" draft rule dated January 19, 2011

We are providing comments based on the proposed rule identified above. Clean Air Act (CAA) §185 requires states with ozone nonattainment areas classified as Severe or Extreme to develop a SIP fee rule if an area fails to attain the ozone standards by its required attainment date. While we have not performed an exhaustive review, we have noted several provisions of the proposed rule which are not consistent with the requirements of CAA §185. For example, the rule at provision (D)(1)(e) would allow a source to exclude from the calculation of baseline emissions the emissions from a "clean unit." Also, provision (A)(3) would result in no fees assessed in any year if the total actual emissions from all sources are less than 80% of the combined baseline emissions of all sources. CAA §185 requires that fees be assessed on individual sources if the source's emissions are greater than 80% of its baseline emissions.



EPA has developed "Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS" (January 5, 2010), which states that an alternative program may be acceptable if the state can demonstrate, consistent with the principles in CAA §172(e), that the alternative fee program as a whole is not less stringent than a CAA §185 program would be for the area. We understand that the California Air Resources Board (CARB) is working on such a demonstration for an alternative program. Before adopting your proposed rule, we encourage you to work with CARB to ensure that, along with any needed CAA §172(e) demonstration, it is adequate to fulfill CAA §185 requirements.



Please direct any questions about our comments to me at (415) 947-4115 or to Lily Wong at (415) 947-4114.

8/9/2011

District Response to Comment 1

1. Allowance for a “Clean Unit” has been removed from the rule.
2. The rule has been modified to remove the multiple facility aggregation exemption.
3. A fee equivalency strategy has been added to the rule consistent with FCAA Section 172(e). See Section (E) of the rule.

Comment 2

PRELIMINARY DRAFT

PTSD comments on MDAQMD Preliminary Draft Rule 315, dated 6/23/11

Federal Clean Air Act Section 185 Penalty

Comments

1. There are two sections E(3). For the purposes of this discussion, the sub-parts of Section E are assumed to be re-numbered as shown below.

(E)(1) Federal Clean Air Act Section 185 "Tracking Account"

(E)(2) Basinwide Accounting

(E)(3) Equivalency Determination

(E)(3)(4) Reporting Requirements

(E)(4)(5) Partial Equivalency Determination and Calculation of Penalty

2. The rule does not have procedures for establishing the "aggregated penalty amount" (AP) referenced in section (E)(3)(b)

To address this, we recommend adding sub-parts (E)(2)(a) and (E)(2)(b) as shown below, and re-numbering existing sub-part (E)(2)(a) and subsequent sub-parts accordingly.

Proposed section (E)(2)(a):

The APCO shall annually request a penalty determination, calculated as specified in section (D), for subject facilities located within the portions of the AQMA that are under the jurisdiction of the Antelope Valley Air Quality Management District and the South Coast Air Quality Management District, from the APCO or Executive Officer of each respective District.

Proposed section (E)(2)(b):

The AQMA aggregated penalty amount shall be the section D penalties calculated by the APCO, plus those reported by the Executive Officer of the Antelope Valley Air Quality Management District and the South Coast Air Quality Management District pursuant to section (E)(2)(a).

3



3. Change the reference in the section (3)(b) formula for the determination of equivalency as shown below.

AP = The aggregated penalty amount determined by the APCO pursuant to subsection ~~(E)(2)(a)~~ (E)(2)(b) above.

4



4. Change references to prior sections (E)(2)(a)-(b) throughout.

District Response to Comment 2

1. Section (E) has been correctly renumbered.
2. Requested sections have been added. See subsection (E)(2)(b) and (E)(2)(d). Subsections renumbered accordingly.
3. Cross reference has been corrected.
4. Cross references have been corrected.

**STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
AIR RESOURCES BOARD**



P. O. Box 2815
Sacramento, California 95812

September 8, 2011

**Transmittal
of
ARB Staff Rule Review Comments**

To: Tracy Walters, Air Quality Planner
Mojave Desert Air Quality Management District
Telephone Number: (760) 245-1661 ext 6122
e-mail: twalters@mdaqmd.ca.gov

From: Patrick Au, (916) 322-3303
e-mail: pau@arb.ca.gov

The following proposed rule, which is scheduled for a public hearing to be held by your District Board on September 26, 2011, was received by us on August 4, 2011 for our review:

315 Federal Clean Air Act Section 185 Penalty

We have reviewed the rule and have the comments on the following page. We believe that our comments can be used to enhance the clarity and effectiveness of Rule 315.

These comments were discussed in a conference call on August 26, 2011, with representatives of the District, the U.S. Environmental Protection Agency, and the Air Resources Board. If you have any questions about our comments, please call Ms. Sylvia Oey, Manager, Southern California State Implementation Plan Section, Planning and Technical Support Division at (916) 322-8279.

Thank you for involving the Air Resources Board staff in your rule development process.

Rule review comments are on the following page

Date: September 8, 2011

Air Resources Board Staff Comments on
Mojave Desert Air Quality Management District
Proposed Rule 315

Rule 315 Federal Clean Air Act Section 185 Penalty

1. The rule should be clarified to differentiate between section 185 fee obligation and section 185 fees that are collected. For example, section E(2)(b) could be revised as follows:

The APCO shall annually request an accounting of applicable ~~penalties~~ penalty obligation, as determined in subsection (D)(2), ~~for sources within the portions of the AQMA that are under the jurisdiction of the Antelope Valley Air Management District and the South Coast Air Quality Management District from the APCO or Executive Officer or each respective district.~~ The APCO shall also annually request an accounting of the applicable penalty fees collected within the portions of the AQMA that are under the jurisdiction of the Mojave Desert Air Management District and the South Coast Air Quality Management District from the APCO or Executive Officer or each respective district.

2. The rule should include dates for the completion of critical actions. The rule should include a deadline for the submittal of the annual report discussed in section E(4).
3. The staff report should identify additional sources of funds and expenditures that can be used in the Section 185 Equivalency tracking account established in section E(1) of the rule to include Moyer and bond program funds.
4. Sections E(4) and E(5) of the rule should be rearranged to reflect the fact that, sequentially, the fee determination and billing discussed in section E(5) will occur before the completion of the report discussed in Section E(5).

District Response to Comment 3

1. Subsection (E)(2)(b) and (E)(2)(e) have been clarified to differentiate between Section 185 fee obligation and Section 185 fees that are collected. Subsection (E)(2)(c) was added to incorporate additional suggested language.
2. Completion dates for critical actions have been added as indicated.

	Equivalency Reporting Requirements	Rule Section	Completion Date
1	Verification of actual emissions from Facility	(C)(1)	June 01
2	Request expenditures of SCAQMD and AVAQMD	(E)(2)(a)	July 01
3	Request penalty obligation of SCAQMD and AVAQMD	(E)(2)(b)	
4	Request penalty fees collected in SCAQMD and AVAQMD	(E)(2)(c)	
5	Determination of equivalency	(E)(3)(a)	August 01
6	Partial Equivalency notification to facility (if needed)	(E)(4)(b)	August 15
7	Payment due	(E)(4)(b)	September 15
8	Permit suspension notification	(E)(4)(b)	October 01
9	Annual Report to CARB and USEPA	(F)(2)	December 31

3. Sources of funds and expenditures that can be used in the Section 185 Equivalency Tracking Account are discussed in (VI)(D) of this Staff Report. Additional discussion has been incorporated to identify how indicated funds are surplus, and to identify that certification belongs to future funding that may be added.
4. Previous subsection (E)(3) was relocated to new Section (F) – Reporting Requirements. This rearrangement reflects the fact that, sequentially, this information is the culmination of all the items required in Section (E).

Alan De Salvio

From: Steckel.Andrew@epamail.epa.gov
Sent: Thursday, September 15, 2011 12:17 PM
To: Alan De Salvio; mguzzett@arb.ca.gov; soey@arb.ca.gov
Cc: Wong.Lily@epamail.epa.gov; Christenson.Kara@epamail.epa.gov
Subject: EPA comments on Mojave and Antelope CAA section 185 rules



United States Environmental Protection Agency

Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

September 15, 2011

Transmittal of EPA Rule Review Comments

To: Alan De Salvio, Mojave Desert Air Quality Management District
adesalvio@mdaqmd.ca.gov

Mike Guzzetta, California Air Resources Board
mguzzett@arb.ca.gov

From: Andrew Steckel, Rulemaking Office Chief
steckel.andrew@epa.gov

Re: MDAQMD Rule 315, "Federal Clean Air Act Section 185 Penalty"
AVAQMD Rule 315, "Federal Clean Air Act Section 185 Penalty"

We are providing comments based on our preliminary review of the draft rules identified above, dated August 4, 2011. The sections cited below refer to the same sections in both the Mojave Desert and Antelope Valley draft rules. Please direct any questions in this regard to me at (415) 947-4115 or to Lily Wong at (415) 947-4114.

- | | | |
|---|---|--|
| 1 | → | 1. Section (A)(2)(b) is confusing and not necessary. We recommend deleting the section. |
| 2 | → | 2. Section (A)(2)(c): Delete as follows "... attaining either the one hour or eight hour ..." |
| 3 | → | 3. Section (A)(3)(b): It is not clear what is meant by the term "complete." Suggested revision: "... during any calendar year in which <u>the District has demonstrated a complete</u> fee equivalency demonstration has been made in accordance with..." |
| 4 | → | 4. Section (C)(1): The rule should require sources to submit an annual report of actual emissions, as opposed to a submittal only after a written request by the APCO. Under CAA 182(a)(3)(B), sources should already be annually reporting their emissions. Also, SJV's Rule 3170 provision 6.2 requires such submittals. |
| 5 | → | 5. Section (C)(2): Edit as follows: " Beginning in the year this rule is adopted, the The APCO shall ..." |
| 6 | → | 6. Section (E)(1): The rule should identify the specific potential program(s) that will be relied upon in the 185 Equivalency Tracking Account. The staff report should elaborate on these program(s), including |

9/15/2011

the nature and authority for the funding, the expected duration of funding (e.g., whether the funding is on-going or one-time), the estimated magnitude of these expenditures, and the analyses documenting how these expenditures are surplus.

- | | | |
|----|---|--|
| 7 | → | 7. Section (E)(1)(a)(ii): Revise as follows "... or <u>and</u> USEPA..." |
| 8 | → | 8. Section (E)(2): In order for the regulated community and the public to more clearly understand how the rule is to be implemented, the rule should include dates. |
| 9 | → | 9. Section (E)(2)(b) and (d): We understand that the District is requesting information on sources' penalty obligations calculated pursuant to (D)(2) as opposed to penalties actually collected . If that is correct, please edit accordingly. |
| 10 | → | 10. Section (E)(3): Include date certain for the APCO's annual determination of equivalency. |
| 11 | → | 11. Sections (E)(3), (E)(4), and (E)(5): The rule requires an equivalency determination as outlined in (E)(3). If that determination shows insufficient funds in the Combined AQMA Equivalency Tracking Account, the District intends to implement section (E)(5) to collect fees from major sources to make up the shortfall. The rule is not clear on the timing and scope of the section (E)(4) reporting of equivalency, especially if section (E)(5) is being implemented. We understand the District intends to report after implementation of (E)(5). Also, the exemption in section (A)(3)(b) may need to be revised to address the scenario if facility fees must be collected in order to demonstrate equivalency. |
| 12 | → | 12. Section (E)(4)(a): Include date certain for the submittal of the report to CARB and EPA. |
| 13 | → | 13. Section (E)(4)(a)(i)-(vii): There may be errors in this section. For instance, section (E)(4)(a)(vi) refers to calculations pursuant to (E)(2) – should the reference be (E)(3)? Also, it is not clear the meaning of section (E)(4)(a)(vii) – is this B ₁ in section (E)(3)(b)? |
| 14 | → | 14. Section (E)(5)(b): It would be helpful to specify dates: 1) when the District will notify the facility of the penalty amount due (e.g., within "x" days after the determination in section (E)(3)(b) that equivalency was not demonstrated), 2) when payment is due (e.g., payment will be due no later than "y" days after date of notification), and 3) when the District will mail the permit suspension notification. |
| 15 | → | 15. Because the District's approach relies on eligible revenues/expenditures in the South Coast Air Quality Management District for the Southeast Desert Modified Air Quality Maintenance Area, the staff report should discuss the District's coordination with SCAQMD and SCAQMD's agreement to report information outlined in Section (E)(2). |

9/15/2011

District Response to Comment 4

1. Subsection (A)(2)(b) has been deleted.
2. Subsection (A)(2)(c) has been modified to remove the indicated wording.
3. Subsection (A)(3)(b) has been revised as suggested for clarification.
4. Subsection (C)(1) has been modified to require an annual report of actual emissions, as opposed to submittal only after written request.
5. Language from subsection (C)(2) has been removed as suggested.
6. Attachment “A” has been added to identify specific program(s) that will be relied upon in the Section 185 Equivalency Tracking Account. Additionally, sources of funds and expenditures that can be used in the Section 185 Equivalency Tracking Account are discussed in (VI)(D) of this Staff Report. Additional discussion has been incorporated to identify how indicated funds are surplus, and to identify that certification belongs to future funding that may be added.
7. Subsection (E)(1)(a)(ii) has been revised to CARB “and” USEPA.
8. Completion dates for critical actions have been added as indicated.

	Equivalency Reporting Requirements	Rule Section	Completion Date
1	Verification of actual emissions from Facility	(C)(1)	June 01
2	Request expenditures of SCAQMD and AVAQMD	(E)(2)(a)	July 01
3	Request penalty obligation of SCAQMD and AVAQMD	(E)(2)(b)	
4	Request penalty fees collected in SCAQMD and AVAQMD	(E)(2)(c)	
5	Determination of equivalency	(E)(3)(a)	August 01
6	Partial Equivalency notification to facility (if needed)	(E)(4)(b)	August 15
7	Payment due	(E)(4)(b)	September 15
8	Permit suspension notification	(E)(4)(b)	October 01
9	Annual Report to CARB and USEPA	(F)(2)	December 31

9. Subsection (E)(2)(b) and (E)(2)(e) have been clarified to differentiate between Section 185 fee obligation and Section 185 fees that are collected.
10. See comment response #8.
11. See comment response #8. Additionally, the District believes that the subsection (A)(3)(b) exemption is sufficient in clarity as presented.
12. See comment response #8.
13. References in (F)(1)(e) and (f) corrected.

14. See comment response #8.

15. The Staff Report discusses the District coordination with the SCAQMD and the SCAQMD's agreement to report information outlined in subsection (E)(2) in subsection (VI)(D).

Tracy Walters

From: Alan De Salvio
Sent: Tuesday, September 27, 2011 4:41 PM
To: Oey, Sylvia@ARB; Tracy Walters
Cc: Bret Banks; Steckel.Andrew@epamail.epa.gov; Lily Wong; Christenson.Kara@epamail.epa.gov
Subject: RE: AV and MD Rule 315 Staff Reports
 We will make that change, in addition to removing the confusing reference to the 8-hour SIP.

From: Oey, Sylvia@ARB [mailto:soey@arb.ca.gov]
Sent: Tuesday, September 27, 2011 4:19 PM
To: Tracy Walters; Alan De Salvio
Cc: Bret Banks; Steckel.Andrew@epamail.epa.gov; Lily Wong; Christenson.Kara@epamail.epa.gov
Subject: RE: AV and MD Rule 315 Staff Reports

Alan:

One other suggested revision to your draft Rule 315 Staff Reports – my references are to the MDAQMD draft staff report dated 9/23/11

Page 9, Section VI. A:

This rule also shall cease to be applicable when the USEPA finds that the AQMA ~~is designated as~~ attaining has attained the one-hour national ambient air quality standard for ozone.

[REASON: USEPA has indicated that it will not be redesignating areas for the one-hour standard since it is no longer in effect. It is, however, issuing findings of attainment.]

Sylvia

From: Tracy Walters [mailto:twalters@mdaqmd.ca.gov]
Sent: Friday, September 23, 2011 2:26 PM
To: Oey, Sylvia@ARB; Steckel.Andrew@epamail.epa.gov; Lily Wong; Christenson.Kara@epamail.epa.gov
Cc: Alan De Salvio; Bret Banks
Subject: AV and MD Rule 315 Staff Reports

Good Afternoon,

The Staff Reports for both the AVAQMD and MDAQMD are available, including all comments received to date. The AVAQMD rule is set for amendment October 18, 2011. The MDAQMD rule is scheduled for amendment October 24, 2011.

Thank you for all your input and assistance in the rule amendment process.

Tracy Walters
 Mojave Desert AQMD
 Lead Air Quality Planner
 (760) 245-1661 extension 6122

11/23/2011

District Response to Comment 5

1. Language in Section (VI)(A) of the Staff Report was changed as suggested.